

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of:

JOHN G. KUYKENDALL

Former President, Director and  
Institution-Affiliated Party  
of:

KEY FLORIDA BANK  
BRADENTON, FLORIDA

RE: OTS Order No. ATL-95-13

Dated: December 14, 1995

STIPULATION AND CONSENT TO ENTRY OF A  
CEASE-AND-DESIST ORDER FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed John G. Kuykendall ("KUYKENDALL") former president, director and institution-affiliated party of Key Florida Bank of Bradenton, Florida ("KEY" or "the Institution"), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding for affirmative relief against KUYKENDALL pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b);<sup>1</sup>

WHEREAS, the OTS, based upon information derived from the exercise of its regulatory responsibilities, finds that KUYKENDALL engaged in a number of unsafe and unsound practices and actions representing breaches of his fiduciary duty to KEY, including use of corporate resources to pay for personal expenses, and the inaccurate drafting and maintaining of institution books and records, including minutes of meetings of committees of the Board of Directors;

WHEREAS, KUYKENDALL desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, and without a formal adjudication on the merits, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and

1. All references in this Stipulation and Consent and the related Order to the United States Code are as amended.

agrees to the following terms:

1. Jurisdiction. (a) KEY, at all times relevant hereto, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1462(4). Accordingly, KEY was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) KUYKENDALL, as a former officer and director of KEY, is deemed to be an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof (see 12 U.S.C. § 1818(i)(3)).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an enforcement proceeding against institution-affiliated parties. Therefore, KUYKENDALL is subject to the authority of the OTS to initiate and maintain a proceeding against him for affirmative relief pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

2. Consent. KUYKENDALL consents to the issuance by the OTS of the accompanying Cease and Desist Order For Affirmative Relief ("Order"). KUYKENDALL further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

3. Finality. The Order is issued by the OTS under the authority of Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Southeast Region, OTS, it shall be a final order, effective and fully enforceable by the OTS and any successor agency or entity under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. Waivers. KUYKENDALL waives the following:

(a) the right to be served with a written notice of the OTS's charges against him (see Section 8(b) of the FDIA);

(b) the right to an administrative hearing of the OTS's charges against him (see Section 8(b) of the FDIA); and

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

5. Other Government Actions Not Affected. (a) KUYKENDALL acknowledges and agrees that the consent to the entry of the Order is for the purpose of resolving this action only, and does not release, discharge, compromise, settle, dismiss, resolve,


admit, acknowledge or in any way affect any actions, charges against, or liability of KUYKENDALL that arise pursuant to this action or otherwise, and that may be or have been brought by any other government entity other than the OTS.

(b) By signing this Stipulation and Consent to Entry of a Cease-and-Desist Order for Affirmative Relief, KUYKENDALL agrees that he will not assert this proceeding, his consent to the entry of the Order, and/or the entry of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other federal or state governmental entity.

WHEREFORE, KUYKENDALL executes this Stipulation and Consent to Entry of a Cease-and-Desist Order for Affirmative Relief intending to be legally bound hereby.

By:

Accepted by:  
Office of Thrift Supervision

  
JOHN G. KUYKENDALL

  
RICHARD M. RICCOBONO  
ACTING REGIONAL DIRECTOR  
SOUTHEAST REGIONAL OFFICE

Dated: 12-12-95

Dated: 12/14/95

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Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of:

JOHN G. KUYKENDALL

Former President, Director and  
Institution-Affiliated Party  
of:

KEY FLORIDA BANK  
BRADENTON, FLORIDA

RE: OTS Order No. ATL-95-13

Dated: December 14, 1995

CEASE-AND-DESIST ORDER FOR AFFIRMATIVE RELIEF

WHEREAS, JOHN G. KUYKENDALL ("KUYKENDALL") has executed a Stipulation and Consent to Entry of a Cease and Desist Order for Affirmative Relief ("Stipulation");

WHEREAS, KUYKENDALL by his execution of the Stipulation, has consented and agreed to the issuance of this Cease and Desist Order for Affirmative Relief ("Order") by the Office of Thrift Supervision ("OTS"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(b); and

NOW THEREFORE, IT IS ORDERED that:

1. Without the prior written approval of the OTS, KUYKENDALL shall not accept a position as a director or senior executive officer of any savings association as that term is defined pursuant to 12 U.S.C. §1813(b).

2. KUYKENDALL shall not accept a position as a director or senior executive officer with any institution or entity described by 12 U.S.C. §1818(e)(7)(A), other than a savings association covered by paragraph 1 of this Order, without giving the OTS sixty (60) days' prior written notice of his intention to accept such a position. The preceding sentence shall not apply, however, where KUYKENDALL determines to accept a position with such an institution or entity after having previously worked for the same institution or entity (in a non-senior executive officer) for a period of not less than two (2) years, in which event, KUYKENDALL shall be bound by the provisions of Paragraph

3(b) below.

3. Pursuant to any position covered by Paragraphs 1 and 2 of this Order, KUYKENDALL shall provide a copy of this Order and the accompanying Stipulation to all prospective employers as described in paragraph 2 of this Order at the earliest practicable opportunity:

(a) To any prospective employer as described in Paragraph 2 of this Order before he accepts an offer of employment covered by this Order; and

(b) To any existing insured depository institution employer that offers him a "senior executive officer" position, as defined herein, before he accepts such a promotion.

4. For purposes of this Order,

(a) the term "director" shall have the definition set forth in 12 CFR §574.9(a)(1);

(b) the term "senior executive officer" shall mean the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, or any other officer carrying out the duties of any of these identified positions;

(c) "OTS" includes any successor agency or entity.

(d) For purposes of paragraph 2 of this Order, "notice" shall be given to the Regional Director for the Southeast Region for the OTS, or his designee, 1475 Peachtree Street, N.E., Atlanta, Georgia, 30309, or his successor and shall include (i) the name, address and type of institution that is a prospective employer; (ii) name and title of the representative of the institution with whom KUYKENDALL is discussing possible employment; (iii) job title and responsibilities of the position or positions KUYKENDALL is seeking or for which KUYKENDALL is being considered for employment; and (iv) a representation to the OTS that KUYKENDALL has complied with paragraph 3 of this Order.

5. In any employment with any insured depository institution or other entity listed under 12 U.S.C. §1818(e)(7)(A), KUYKENDALL,

(a) shall not use institution funds or resources, including seeking or accepting reimbursement, to purchase items not related to and intended for the institution's legitimate business needs and expenditures;

(b) with regard to any bank records or reports for which he has responsibility, shall keep such records accurately, completely and in compliance with all applicable laws; and

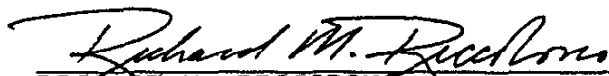
(c) shall abide by all laws, rules and regulations governing the operation and supervision of such institution.

6. The Stipulation is made a part hereof and is incorporated herein by this reference.

7. KUYKENDALL shall respond promptly to any request from the OTS for information or documents that the OTS reasonably requests in connection with other matters concerning KEY and/or its officers, employees or other institution-affiliated parties related to transactions entered into during KUYKENDALL's service, or to demonstrate compliance with this Order.

8. This Order shall be and is effective on the date it is issued, as shown on the caption on the first page hereof, and shall remain effective until it is terminated, modified or suspended which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director or his designee or successor.

THE OFFICE OF THRIFT SUPERVISION  
By:

  
RICHARD M. RICCOBONO  
ACTING REGIONAL DIRECTOR  
SOUTHEAST REGIONAL OFFICE